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HJ IBRAHIM MUHAMMAD

v.

KADI DAERAH BESUT & ORS

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HIGH COURT MALAYA, KUALA TERENGGANU

MOHD YAZID MUSTAFA J

[CIVIL ACTION NO: 21-11-2007]

31 MAY 2012

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ADMINISTRATIVE LAW: *Natural justice - Breach - Dismissal - Dismissal of Jurunikah by State Religious Authority - Whether plaintiff a member of the State Service - Whether service governed by statute - Failure to give due notice - Failure to accord proper hearing - Whether fatal - Whether dismissal null and void - Administration of Islamic Family Law Enactment 1985 [Terengganu], s. 26(5) - Federal Constitution, art. 135(2)*

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CONSTITUTIONAL LAW: *Public servants - Dismissal - Right to fair hearing - Dismissal of Jurunikah by State Religious Authority - Whether plaintiff a member of the State Service - Whether service governed by statute - Whether entitled to fair hearing before being dismissed - Federal Constitution, art. 135(2) - Administration of Islamic Family Law Enactment 1985 [Terengganu], s. 26(5)*

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The plaintiff was appointed as a *Jurunikah* or solemnizer of Islamic marriages for the Mukim of Pelagat, Besut (later, Mukim Lak Lok), by HRH the Sultan of Terengganu by way of a *tauliah* under s. 26(5) of the Administration of Islamic Family Law Enactment 1985, Terengganu ('the Enactment'). On 8 March 2006, the plaintiff was orally queried by the Registrar of Islamic Marriages,

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Besut ('Registrar') in respect of two alleged misconduct, and following that, the Pesuruhjaya Hal Ehwal Agama Negeri Terengganu ('Pesuruhjaya') made a written representation to the State Secretary, Terengganu ('State Secretary') recommending that the plaintiff be dismissed from office. The plaintiff was completely

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unaware as to the correspondences that were taking place between the Registrar, the Pesuruhjaya and the State Secretary. Nonetheless, on 10 April 2006, the plaintiff was informed by the Registrar that he was no longer allowed to solemnize any marriage, presumably because he had attended a public gathering

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dubbed 'ceramah kenaikan harga minyak' in Besut. In the meanwhile, on 10 May 2006, the State Secretary wrote to the Pesuruhjaya affirming that the Sultan had consented to the

termination of the plaintiff's service, and on 4 September 2006, the Pesuruhjaya wrote to the plaintiff informing him of the dismissal. The plaintiff contended that his dismissal was effected in ways that transgressed the principles of natural justice, or the grains of art. 135 of the Federal Constitution – thereby rendering the same null and void and of no effect in law – and in the circumstances applied for a declaration to the effect and for reinstatement and damages for wrongful dismissal. Before the learned judge, the defendants admitted to not informing the plaintiff of the preferred charges, or to giving him an opportunity to answer those charges, but argued nonetheless that the right to be heard was not available to the plaintiff since he had been appointed by the Sultan and there was no written contract regarding his appointment. It was averred, upon the authority of the Federal Court in *Haji Ariffin v. Government of Pahang*, that the absence of written contract meant that the plaintiff's appointment as a *jurunikah* was not governed by any rules, or any principles of natural justice, and further that, since the plaintiff was appointed at the pleasure of the Sultan, the appointment could be discontinued by the Sultan in like manner.

Held (allowing claim; reinstating plaintiff to former post):

- (1) The present case bears no resemblance to the facts of *Haji Ariffin's* case. In that case, HRH the Sultan had two choices to act on the recommendation of the State Secretary's report, namely either to proceed under reg. 32 of Chapter D of the General Orders, in which the appellant should be given a chance to adduce exculpatory evidence, or proceed under the appellant's terms of appointment contained in the contract of service. HRH the Sultan chose to act under the appellant's terms of appointment as contained in the contract and thus the appellant's service was legally terminated. In the present case, there was no written contract governing the plaintiff's appointment as a *jurunikah*. Hence, the only thing left for the court to decide on is as to the *tauliah* given under s. 26(5) of the Enactment. (paras 12 & 13)
- (2) In order to apply art. 135(2) of the Federal Constitution, the plaintiff's status must first be established, namely whether he was a member of the public service of the State of Terengganu. In the present case, by virtue of the plaintiff's employment under s. 26(5) of the Enactment, the relationship

- A that existed is not one of pure ‘master and servant’ relationship. In consequence, whilst this court is taking note that the Federal Court in *Fadzil bin Mohammed Noor v. Universiti Teknologi Malaysia* has decided that the principles of administrative law or natural justice did not apply to cases of
- B pure ‘master and servant relationship’, the present case is not one such case. The element of public employment or service clearly existed in this case. Such employment or appointment is supported by statute and is in the nature of an office or status capable of protection. (paras 15-16)
- C (3) Since the employment of the plaintiff was governed by statute and there was no contract to be used to safeguard his rights from being wrongfully dismissed or terminated, the defendants ought to accord the plaintiff a proper hearing before the appropriate disciplinary authority. The accusations leveled
- D against him must also be brought to his notice, and the grounds on which action is contemplated to be taken must be stated in the notice. This is to enable him to defend himself. (paras 18 & 20)
- E (4) The plaintiff was never notified or accorded a proper hearing to bring forward his explanation before the Pesuruhjaya wrote the letter to the State Secretary recommending his dismissal. And nor was the plaintiff given any chance to forward his
- F defence by way of written representation to the dismissing authority. On the evidence, the plaintiff had clearly been dismissed from service by way of punishment. This is clear from the tenor of the letter written by the Pesuruhjaya to the State Secretary. (paras 17 & 19)
- G (5) The plaintiff’s dismissal is void, inoperative and of no effect in law and the court would therefore declare that he is still a *Jurunikah* for the Mukim of Lak Lok with his re-instatement to take effect from 30 January 2011. It is further ordered that the salary and emoluments as were due to the plaintiff from
- H the date of his dismissal 10 April 2006 to 30 January 2011 (RM22,800) be paid to the plaintiff by the third defendant, the State Government of Terengganu. (paras 21-27)

I [Editor’s note: The Islamic Religious Council, Terengganu had initially filed a notice of appeal, but had since withdrawn it.]

Case(s) referred to:

Fadzil Mohamed Noor v. Universiti Teknologi Malaysia [1981] CLJ 85;
[1981] CLJ (Rep) 53 FC (**dist**)
Haji Ariffin v. Government of Pahang [1968] 1 LNS 45 FC (**dist**)
Ketua Pengarah Kastam v. Ho Kwan Seng [1975] 1 LNS 72 (**fol**)

Legislation referred to:

Administration Of Islamic Family Law Enactment 1985 [Terengganu],
s. 26(5)
Federal Constitution, art. 135(2)
Interpretation Acts 1948 and 1967, s. 47

*For the plaintiff - Tun Salleh Abas (Haris with him); M/s Salleh Abas Yaacob
& Sofiah*

For the defendants - Rosmawati Husin; SFC

Reported by Wan Sharif Ahmad

JUDGMENT

Mohd Yazid Mustafa J:

[1] The plaintiff was a *Jurunikah* appointed by HRH the Sultan through a *tauliah* under s. 26(5), Part III, Administration of Islamic Family Law Enactment 1985 (Terengganu). It would appear that, on 10 May 2006, the State Secretary wrote to the Pesuruhjaya Hal Ehwal Agama Negeri Terengganu informing that HRH the Sultan had consented to the plaintiff's termination of service as a *Jurunikah* in the Mukim of Pelagat, in the District of Besut. Therefore, based on the letter written by the State Secretary, on 4 September 2006, the Pesuruhjaya Hal Ehwal Agama Negeri Terengganu wrote the plaintiff a letter to inform that his termination of service had been consented to by HRH the Sultan.

[2] In the plaintiff's statement of claim, he urged this court:

- (1) to declare that his dismissal was void and/or inoperative.
- (2) to be allowed to continue with the duties as a *Jurunikah*; in the alternative, damages for wrongful dismissal.
- (3) to take into account of the salary and emoluments due to him from the third defendant as from the date of his dismissal.

A The Brief Facts Are As Follows:

B [3] On 10 April 2006, the plaintiff went to see SD1, the Registrar of Islamic Marriages in the District of Besut, in order to get SD1's prior approval for the plaintiff to solemnize a particular marriage in his Mukim. However, he was told by SD1 that he was no longer allowed to solemnize marriages in his Mukim because he had attended a *ceramah kenaikan harga minyak* in Besut which was conceded as truthful by the plaintiff in his testimony.

C [4] It was said by SD1 in his testimony that there was a letter written in *Jawi* (IDD1) which could be styled as *surat layang* accusing the plaintiff of two serious misconducts incompatible with the plaintiff's post as a *Jurunikah*, namely that:

- D** (1) He had not attended Juma'at prayer in his Mukim.
(2) He had solemnized marriages without prior approval.

E [5] It was further said by SD1 that on 8 March 2006 the plaintiff attended Pejabat Agama Daerah Besut for some other reasons and thus, he asked the plaintiff to see him to briefly inquire into the complaints. He later found out that the first complaint (not attending Friday prayer) was indeed truthful. However, the plaintiff managed to bring forward his explanation as he feels embarrassed by all the words that people would be saying against him. In regard to the second complaint, SD1 found out that it was totally baseless and just an empty accusation.

G [6] SD1 had been asked to prepare a report on his inquiry by SD3, the Pesuruhjaya Hal Ehwal Agama Negeri Terengganu. Upon receiving the report prepared by SD1, SD3 had related the matter to the State Secretary with a recommendation that the service of the plaintiff as a *Jurunikah* be terminated. SD3 asked the State Secretary to bring his recommendation into consideration of HRH the Sultan.

H [7] SD3 conceded that the plaintiff was never being informed of the reason for his termination of service. There is no evidence to show that the plaintiff had been informed of the recommendation made by SD3. SD3 also conceded that he never wrote to the plaintiff to require the plaintiff to answer those charges as contained in his letter to the State Secretary dated 22 March 2006.

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[8] It was pointed out by the plaintiff's counsel that the King can do no wrong. In other words, the plaintiff is not questioning the act of HRH the Sultan in consenting to his termination of service. The issue is whether the recommendation which eventually resulted in the plaintiff's dismissal made by SD3 without giving him sufficient and reasonable opportunity to answer the charges and to bring forward his explanation is tainted with illegality.

[9] The defendants' counsel argued that the right of being heard should not be made available at all to the plaintiff since he had been appointed by HRH the Sultan and there was no written contract regarding his appointment. She had also argued that since the plaintiff was appointed at the pleasure of HRH the Sultan, the appointment could also be so discontinued by HRH the Sultan by virtue of s. 47 of the Interpretation Acts 1948 and 1967.

[10] She further argued that since there was no written contract, the plaintiff's appointment as a *Jurunikah* is hence not governed by any rules. Therefore, the principle of natural justice is not available in the plaintiff's case. In support of her contention, the defendants' counsel relied greatly on the decision of the Federal Court in *Haji Ariffin v. Government of Pahang* [1968] 1 LNS 45, where it was held that the Pahang State Government had the right to appoint a *Kathi* on contract subject to termination of service on notice and that the appellant's services thereon had been lawfully terminated. Such termination did not involve a penalty so as to make it a dismissal within the ambit of art. 135(2) of the Federal Constitution.

[11] This is how the defendants' counsel put forward her argument. In my judgment, however, the present case bears no resemblance to the facts of *Haji Ariffin's* case. There, HRH the Sultan had two choices to act on the recommendation of the State Secretary's report, namely, either to proceed under reg. 32 of the General Orders, Ch. D in which the appellant should be given a chance to bring in exculpatory evidence or proceed under the appellant's terms of appointment as contained in the contract. HRH the Sultan chose to act under the appellant's terms of appointment as contained in the contract and thus, the appellant's service was legally terminated.

- A [12] In the present case, there was no written contract governing the plaintiff's appointment as a *furunikah*. The only thing that is left for my decision is the *tauliah* given under s. 26(5), Part III, Administration of Islamic Family Law Enactment 1985 (Terengganu).
- B [13] It is incumbent upon me to cite the decision of the Federal Court in the very much celebrated case of *Ketua Pengarah Kastam v. Ho Kwan Seng* [1975] 1 LNS 72 where in a well reasoned judgment, Raja Azlan Shah FJ (as HRH the Sultan of Perak then was) had this to say:
- C ... the rule of natural justice that no man may be condemned unheard applies to every case where an individual is adversely affected by an administrative action, no matter whether it is labelled "judicial", "*quasi* judicial", or "administrative" or whether
- D or not the enabling statute makes provision for a hearing ...
- E [14] In *Fadzil bin Mohammed Noor v. Universiti Teknologi Malaysia* [1981] CLJ 85; [1981] CLJ (Rep) 53, Raja Azlan Shah CJ (as HRH the Sultan of Perak then was) again said that in a pure master and servant relationship, the principles of administrative law, including those of natural justice have no part to play. In such a case, the dismissal was governed by the law of contract and there was no right to be heard.
- F [15] In order to apply art. 135(2) of the Federal Constitution, the plaintiff's status must first be established; whether he was a member of the Public Service of the State of Terengganu or not. In this present case, by virtue of the plaintiff's employment under s. 26(5), Part III, Administration of Islamic Family Law Enactment 1985 (Terengganu), I find that it is not a mere 'master and
- G servant' relationship. The element of public employment or service exists in this case. The employment or appointment was supported by statute and it is in the nature of an office or a status which is capable of protection.
- H [16] From the evidence adduced here, I am of the opinion that the plaintiff had been dismissed from service by way of punishment. It is clear that this termination of service is a form of punishment if we were to look at the letter written by SD3 to the State Secretary (D4) asking the State Secretary to recommend
- I the plaintiff's termination of service to HRH the Sultan.

[17] Since the employment of the plaintiff was governed by statute and there was no contract to be used to safeguard his rights from being wrongfully dismissed or terminated, then it is important to state here that the court is obliged to require the defendants to accord the plaintiff a proper hearing before the appropriate disciplinary authority in which failure to observe these essential procedural requirements may result in the dismissal being declared void.

[18] I find that the plaintiff was never accorded a proper hearing to bring forward his explanation before SD3 wrote the letter to the State Secretary recommending his dismissal. It is clear from the evidence that the plaintiff was never being called to give his explanation regarding the accusation labelled against him as contained in the letter. In *Kastam's* case, it was held that it is sufficient if the appellant had been given a chance to bring forward his defence by way of written representation to the dismissing authority. This too had not been done in this present case. It was said by SD3 during cross examination that he never wrote to the plaintiff asking the plaintiff to answer those charges.

[19] A basic norm of natural justice is that the plaintiff must be made to know of the accusations labelled against him. In other words, the accusations must be brought to his notice. The notice must be adequate so that the plaintiff will understand the nature of the accusations labelled against him so as to enable him to defend himself. The notice should state the accusations and the ground on which the action is contemplated to be taken. From the evidence which was given throughout the trial, I find that the plaintiff was never being informed of those three reasons as contained in SD3's letter to the State Secretary which was later found to be the basis of his dismissal.

[20] Therefore, for the above-mentioned reasons:

- (1) I declare that the plaintiff's dismissal was void, inoperative and of no effect, and that he is still a *Jurunikah* in Mukim Lak Lok.
- (2) I order that, with effect from 30 January 2011, the plaintiff is to be re-instated to his former post as *Jurunikah* in Mukim Lak Lok.

- A (2) I order that the salary and emoluments due to the plaintiff from the third defendant as from the date of his dismissal up to 30 January 2011 are to be taken into account.

B [21] SP1 ie, the plaintiff was saying that the allowance received by him at the beginning of his appointment as a *furunikah* was RM60 per month. He further said that he received RM100 per month at the end of his tenure of office just before his dismissal. He would be receiving another RM60 paid by the bride. He further testified that the average number of brides would be around 15 couples per month. In a nutshell, he would be receiving RM1,000 per month.

C [22] SD1 ie, the *Pegawai Agama Daerah Besut* testified that the bride would be paying RM60. He further clarified that Mukim Lak Lok is a relatively small *mukim* and therefore, the number of brides that would be solemnized by the *furunikah* is estimated at around five couples per month.

D [23] Based on the balance of probabilities, the evidence adduced by SP1 is more probable. The monthly payment received by SP1 from the Government of Terengganu (RM100) had not been disputed by other witnesses. In fact, his testimony was corroborated by the evidence adduced by SD1 where SD1 said that SP1 would be receiving another RM60 paid by the bride. A particular State Executive Councillor's circular mentioned by SD3 is not part of the evidence since it had not been tendered in the trial. Therefore, I cannot consider the circular mentioned by SD3 in arriving at my decision.

E [24] Based on the balance of probabilities, the evidence adduced by SP1 is more probable where he stated that the number of brides that would be solemnized by a *furunikah* is estimated at around five couples per month because Lak Lok is a relatively small *mukim*.

F [25] After having a thorough examination over the evidence of the witnesses, I find that the plaintiff's income per month is as follows:

- G (1) Amount paid by the Government of Terengganu = RM100
- H (2) Amount paid by the bride = RM60
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(3) Estimated number of brides per month = 5 couples A

(4) Total (RM60 x 5 = RM300) + RM100 = RM400

The salary and emoluments due to the plaintiff from the third defendant as from the date of his dismissal (10 April 2006) up to 30 January 2011 are to be calculated as follows: B

10 April 2006 up to 30 January 2011 = 57 months x [(RM400 (income/month))] = RM22,800.

[26] Therefore, I find that the salary and emoluments due to the plaintiff from the third defendant as from the date of his dismissal (10 April 2006) up to 30 January 2011 is to be at exactly RM22,800. C

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